IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.6.2007

CORAM:

THE HONOURABLE MR.JUSTICE DHARMA RAO ELIPE
AND
THE HONOURABLE MS.JUSTICE K. SUGUNA

W.P. Nos.10157 of 2000 and 29024 of 2003
and
W.P.M.P. No.17558 of 2006

W.P. No.10157 of 2000:

G. Pushkala ... Petitioner

Vs.

1. High Court of Judicature
   at Madras, rep. by its
   Registrar General, Chennai-104

2. K.Muthukumarasamy
   Deputy Registrar
   Tribunal CLAA (on deputation)
   High Court Campus
   Chennai-600104

3. V.Navaneethan
   Special Officer
   Vigilance Cell
   High Court, Chennai-104 ... Respondents

W.P. No.29024 of 2003:

K. Muthukumarasamy ... Petitioner

Vs.

The Registrar General
High Court of Judicature at Madras
Chennai 600 104 ... Respondent

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Both the petitions are filed under Article 226 of the Constitution of India. W.P.No.10157 of 2000 has been filed praying to Issue a Writ of Declaration to declare that the enquiry constituted by the first respondent and being conducted by the 3rd respondent vide ROC NO.24/2000 Con B2 dated 14-6-2000 is illegal and unconstitutional and consequently direct the first respondent to implement the directions given by the Hon'ble Supreme Court in Vishaka vs. State of Rajasthan (AIR 1997 SC 3011) and properly investigate into the petitioner's complaint dated 18-2-2000 against the 2nd respondent through an independent complaints committee consisting of representatives of Women's Organisations and NGOs and punish him after affording due protection to the petitioner.

W.P.No.29024 of 2003 has been filed praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in R.O.C. No.24/2000 Con B.2 dated 10.10.2002 and to quash the same, directing the respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner in W.P.No.29024/03, who is R2 in WP.10157/2003 : Mr. S.V.Jayaraman, Senior Counsel for Mr.K.Balachandran

For Petitioner in W.P.No.10157/00 : Ms.R.Vaigai

For Respondent in W.P. No.29024/03 for R1 & R3 : Mr.B.Rajendran

in W.P. No.10157/00 : Mr.C. Kalaiselvan AGP

COMMON ORDER

DHARMA RAO ELIPE, J.

While the Complainant in the domestic enquiry, which was initiated on her complaint, has filed W.P.No.10157 of 2000 seeking a Writ of Declaration, the delinquent Officer who was inflicted with the order of compulsory retirement has filed W.P.No.29024 of 2003 challenging the said punishment. Since both the matters are inextricably connected with each other, they were heard together for better appreciation of the facts of the case and this common order is passed.

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2. On the basis of the complaint dated 18.2.2000 given by the petitioner in W.P.No.10157 of 2000 (hereinafter referred to as 'the complainant') against the petitioner in W.P.No.29024 of 2003 (hereinafter referred to as the delinquent officer), alleging 'sexual harassment' and 'indecent behaviour' at the place of work, disciplinary proceedings were initiated against the delinquent officer in which he was found guilty and the punishment of compulsory retirement from service was imposed on him.

3. The complaint against the delinquent-officer, in the words of the complainant, is as follows:

> "My Lord, with regret, I would like to submit that soon after days of my deputation to the Advisory Board, Mr. K. Muthukumarasamy started behaving with me in an improper manner by using intolerable words. He used to blabber so many things including saying that his wife is a permanent patient and that he is not leading a happy married life and so on. Since then, I have been avoiding him and he used to get annoyed for that. Later this became a nuisance and he started going to the extent of writing his expressions in bits of papers and giving it to me. Though, I use to destroy them then and there, I have some in hand. He even started calling my house in the midnights which I used to avoid saying one reason or the other.
>
> ... ...
>
> Now, though I have been transferred from the said Tribunal (CLAA) recently, he is continuing his harassment one way or the other. Even now instead of feeling remorse, he harasses me again and again by words and deeds."

4. A show cause notice was issued to the delinquent-officer calling upon him to submit his explanation. Since the explanation offered by the delinquent-officer was found to be not satisfactory, the following charges were framed against him and a departmental enquiry was initiated against him:

> 1.That you, Thiru Muthukumarasamy, Deputy Registrar, now on deputation as Deputy Registrar, Tribunal under Criminal Law Amendment Act, Chennai had behaved in an improper manner with Tmt. G. Pushkala, P.A. to Hon'ble Judges, while she was working as P.A. on deputation in the said Tribunal by issuing two slips to her containing the following words: "I want to kiss on cheeks, chin and lips" "துன்பம் நேர்கையில் யாழிசைத்து இன்பம் சேர்க்க மாட்டாயா?" and this amounts to a demand or

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request for sexual favours and sexual harassment at the place of work and thereby you outraged her modesty and caused mental torture and agony to her and thus committed the acts of misconduct unbecoming of a Government Servant for which you are liable to be punished under the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2. That you, Thiru K. Muthukumarasamy, Deputy Registrar, now on deputation as Deputy Registrar, Tribunal under Criminal Law Amendment Act, Chennai while Tmt.G. Pushkala, P.A. to Hon'ble Judges, was working as P.A. on deputation in the said Tribunal, called her house in the midnights and caused mental torture and agony to her and that even after her transfer from the said Tribunal, you had harassed her again and again by words and deeds, thereby outraged her modesty and caused mental torture and agony to her and thus committed the acts of misconduct unbecoming of a Government servant for which you are liable to be punished under the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

6. In the enquiry proceedings, the complainant examined herself as P.W.1 and also examined five other persons, which included her husband, her colleague and other court-staff. She also produced eight documents as documentary evidence. The delinquent-officer examined a court-staff as defence witness and produced fourteen documents as documentary evidence. The enquiry officer, on the basis of the materials placed before him, came to the conclusion that the delinquent-officer harassed, pestered and subjected the complainant by a conduct against moral sanction and could not stand the test of decency and modesty and made unwelcome sexual advances, which action would squarely covered by the term "sexual harassment" even though there was no physical contact and held that the delinquent was guilty for the act of "sexual harassment" in the work place against the complainant and as such the charges levelled against the delinquent were proved. The delinquent-officer was given an opportunity to submit his further representation, if any, to the findings of the enquiry officer, but his further representation and representation made by him in person were found to be not satisfactory and the Appointing Authority has accepted the findings of the enquiry officer and imposed the punishment of "compulsory retirement" from service on the delinquent officer.

7. The learned senior counsel for the delinquent officer/petitioner in W.P.No.29024 of 2003 has submitted that the petitioner was originally appointed as Steno-Typist in the District

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Court, Vellore in the Tamil Nadu Judicial Ministerial Service in the year 1981 and later on in the year 1988, he was appointed on transfer as P.A. to Hon'ble Judges and since his lien over the post in the parent department has not been severed as per the Fundamental Rules (FR) and Government Orders, his "Appointing Authority" is the District Judge, Vellore, who alone is competent to initiate disciplinary action and to impose punishment. It was further contended that since the alleged "sexual harassment" took place when the petitioner and the complainant were working in the Tribunal (CLAA), it is the Presiding Officer of the Tribunal who is the competent authority to initiate disciplinary action and to impose punishment and that Madras High Court Service Rules will have no bearing and as such, the disciplinary proceedings initiated by the respondent was in violation of the procedures as well as the C.C.A. Rules.

8. On the merits of the complaint, learned senior counsel for the delinquent officer submitted that the two slips in question were part of the materials prepared by the delinquent for submitting a dissertation on the subject "Child Labour - Exploitation Preventive Measures and Indepth Study" to the Annamalai University for completing his M.L. Degree Course. Learned senior counsel further submitted that the delinquent used to note down his thoughts on the above said subject on bits of papers/slips and later on incorporate the same in his dissertation and in fact, the complainant herself assisted the delinquent in preparation of the dissertation and that she also knew well that the delinquent used to instantaneously jot down his thoughts on bits of paper/slips and later on incorporate the same in the dissertation. Learned senior counsel submitted that the lodging of the complaint was only a counter-blast to the delinquent's demand for repayment of the money borrowed by the complainant and in making such a complaint of "sexual harassment", the complainant was induced and encouraged by a group of disgruntled staff, who could not digest the successive promotions viz. Sub Assistant Registrar, Assistant Registrar and Deputy Registrar given to the delinquent in a short span of time. Learned senior counsel submitted that the writings found on the two slips were not intended towards the complainant for soliciting "sexual favours" from her. The said slips, which were kept in the office room of the delinquent, were stealthily removed by the complainant for using the same as the basis for making a complaint of "sexual harassment" against the delinquent.

9. The learned counsel appearing for the complainant would submit that the delinquent officer, taking advantage of his position as superior to that of the complainant, has started behaving indifferently and issued the slips expressing his quench towards her

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and even made phone calls to her during middle of the nights, tarnishing her image in the family circle and disturbing her family life also and unable to bear the torture meted out to her, the complainant had to lodge the complaint against the erring official, which was properly considered by the Enquiry Officer and the Appointing Authority, affording all opportunities to the delinquent. The learned counsel further submitted that since the enquiry officer originally appointed had not acted according to the rules, the complainant had filed W.P.No.10157 of 2000 and even sought for the implementation of the directions of the Apex Court in VISHAKA AND OTHERS vs. STATE OF RAJASTHAN AND OTHERS (AIR 1997 SC 3011) wherein the Apex Court considering the fundamental rights of working women under Articles 14,19 and 21 of the Constitution, framed certain guidelines and norms for protection and enforcement of these rights of the women at their workplaces, and prayed to allow W.P.No.10157 of 2000 and dismiss W.P.No.29024 of 2003.

10. Before dealing with the questions involved in these matters, it must be said that though the complainant challenged the enquiry proceedings by filing W.P.No.10157 of 2000, casting remarks on the then Enquiry Officer, who was also impleaded as third respondent, since the said individual has retired from the service, a Division Bench of this Court by its order dated 5.11.2001, made in W.M.P.Nos.14658 and 14659 of 2000 has issued a direction to proceed with the disciplinary enquiry by affording opportunity to both sides by another Enquiry Officer. Consequent thereupon, the enquiry was proceeded with, which culminated in the punishment of the delinquent officer. Therefore, that part of the prayer in W.P.No.10157 of 2000 becomes infructuous.

11. The other part of the prayer of the complainant in W.P.No.10157 of 2000, to direct the 1st respondent/Registrar to implement the directions of the Apex Court in Vishaka case (cited supra), is in the nature of advancing the cause of justice and in the larger interest of society. But, since during the pendency of the said writ petition, Complaints Committees have been constituted by the High Court to look into the complaints made against the officers and Staff of the High Court and the Judicial Officers and the Judicial Ministerial Staff of the Subordinate Judiciary, by R.O.C.No.5000-A/2001-B2, dated 15.5.2001, nominating one Chairperson and three Members for each Committee, thus answering such prayer of the petitioner and complying with the directions of the Apex Court in Vishaka case, we hold that the writ petition filed by the complainant in W.P.No.10154 of 2000 in its entirety became infructuous. Hence, it is liable to be dismissed as such.

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12. However, since the said proceedings of the Registrar does not contain names of the Chairperson or the Members, but carries a bracketed information that they would be nominated as and when necessary, we feel it appropriate to direct the Registrar General, High Court of Madras, to name Chairpersons and Members to such Committees, with no further loss of time, and circulate copies of the same to all the Sections in the High Court and to all the Subordinate Courts, so that the aggrieved personnel can report to the respective Committees to redress their grievances.

13. During pendency of W.P.No.29024 of 2003, the complainant also filed WPMP.No.17558 of 2006, praying to implead her as a party to the said proceedings. Since she has been extensively heard on the points connected to and covered by W.P.No.29024 of 2003, as it being a common hearing in the writ petition filed by the complainant and the writ petition filed by the delinquent officer, we feel it not necessary to implead her as a party in W.P.No.29024 of 2003. Accordingly, W.P.M.P.No.17558 of 2006 is dismissed.

14. Thus settling these issues, now we shall proceed to deal with the main matter in issue viz. the complaint lodged by the complainant, which ultimately culminated in imposing a punishment of compulsory retirement on the delinquent officer.

15. The delinquent officer contended that since the petitioner was originally appointed as Steno-Typist in the District Court, Vellore and since his lien over the post in the parent Department has not been severed, only the District Judge, Vellore is competent to initiate disciplinary action and to impose punishment. Though this plea was taken by the delinquent officer only at the time of this writ petition and never raked up such an issue either before the Enquiry Officer or before the Appointing Authority, since the same is in the nature of a legal question, we entertained the said plea so as to be answered. On a perusal of the entire materials placed on record and the relevant provisions of law, we are not able to appreciate the said contention of the delinquent officer for the reason that on his being appointed as P.A. to the Honourable Judges in the High Court w.e.f. 27.1.1988, which is a permanent post, carrying a definite time-scale of pay and also enjoyed promotions thereafter, including deputations, it cannot be said that his lien continued in the Tamil Nadu Judicial Ministerial Service.

16. The delinquent officer further contended that since he was deputed to the Tribunal constituted under the provisions of the Criminal Law Amendment Act, the competent authority to initiate

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departmental proceedings, if any, is the Presiding Officer of the Tribunal and the Madras High Court Service Rules will have no bearing on the Criminal Law Amendment Act Tribunal. For this purpose, he relied on G.O.Ms.No.111 Personnel and Administrative Reforms (FR.II) Department dated 2.5.1994 which deals with deputation of Government Servants to State Owned Corporations/Boards/Undertakings and to Cooperative Institutions, Autonomous Bodies, Universities etc., which have no application to the case of the delinquent officer. Since admittedly, he was appointed as P.A. to the Honourable Judges, which was a permanent post and carrying a definite pay scale and was promoted thereafter also, as has already been stated supra, his lien to the Tamil Nadu Judicial Ministerial Service was severed and he falls within the disciplinary rules of the Madras High Court and therefore, it cannot be said that the proceedings initiated by the High Court are void ab initio. Thus, rejecting the claim of the delinquent officer, we shall now proceed to examine the charges, findings of the enquiry officer, which culminated in the order of compulsory retirement of the delinquent officer.

17. The crux of the complaint made against the delinquent officer is that by using his official position, he solicited sexual favours from the complainant passing on written slips and disturbed her during midnights by making telephone calls to her residence and thereby outraged her modesty and caused mental torture and agony to her. In short, the complaint against the delinquent was "sexual harassment at the place of work".

18. It is the case of the complainant that the delinquent-officer, taking advantage of his "superior" position in the High Court, the work atmosphere and the loan availed by her from the delinquent to tide over the urgent financial crisis, started making tacit expressions and gestures to gain sexual favours from her and forced her to surrender to his sexual desires. The complainant alleged that the delinquent openly stated to her that he very much needed her company to quench his sexual thirst since his wife, because of her health condition, was unfit for cohabitation. It was further alleged that the delinquent, in pursuit of his attempts, passed on several slips in his handwriting to the complainant expressing his sexual desire. It is on the basis of two such slips, containing certain expressions/lyrics written in the handwriting of the delinquent and alleged to be passed on by him to the complainant, the complaint had been filed. It was further alleged that the delinquent disturbed the complainant at odd hours by making frequent telephone calls to her residence and later threatened her with the help of the Police to withdraw the complaint made against him.

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19. The delinquent-officer while admitting that the writings found on the two slips in question were written by him, denied the allegation that such writings were intended towards the complainant for getting sexual favours and submitted that he never passed on any slips containing any expression to the complainant. His consistent defence was that the slips in question were part of his preparation for submitting the dissertation on the topic "Sexual Harassment and Abuse of Girl Child Worker" for his M.L. Degree course. According to the delinquent, since he demanded repayment of the money lent by his wife to the complainant, the complainant, to wreak vengeance against him, had stealthily removed those slips from his office-room and used the same as the basis for her complaint. In making the complaint and pressing the same vigourously, she was instigated and encouraged by a group of employees, who could not digest the accelerated promotions earned by him.

20. The enquiry officer framed five points for determination on the basis of the two charges framed against the delinquent and after giving findings on the five points, ultimately held that the charges framed against the delinquent have been proved. A copy of the enquiry officer's findings was furnished to the delinquent and he was called upon to submit his representation, if any, on the said findings. The delinquent was also given a personal hearing before the appointing authority. The appointing authority, while rejecting the further representation of the delinquent, accepted the findings of the enquiry officer and ordered to impose the punishment of compulsory retirement from service on the delinquent. The period of suspension undergone by the delinquent was ordered to be treated as "not on duty" for all purposes.

21. Learned senior counsel for the petitioner-delinquent assailed the findings of the enquiry officer on the ground that the enquiry officer failed to appreciate the evidence in its proper perspective. It was argued that the enquiry officer failed to take into consideration the vast discrepancies in the evidence of the complainant and that the complainant had improved her complaint made before the Registrar General which goes to show that she was instigated and encouraged by other staff who bore ill-will against the delinquent because of his quick and successive promotions. It was further argued that it is the complainant's case that the delinquent started misbehaving with her soon after her deputation, i.e. from December, 1998, and if that were to be true, it is very strange and unbelievable that she ventured to borrow money from the delinquent, ignoring such sexual harassment. This only goes to show that the alleged sexual harassment never took place. The alleged complaint of "sexual harassment" was made only with a view to get

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away with the repayment of the amount borrowed by the complainant.

22. Insofar as the two slips in question are concerned, learned senior counsel argued that the enquiry officer had failed to appreciate the fact that such slips were prepared by the delinquent for the purpose of the preparation of the dissertation for M.L. Degree course. Further, it was argued that at no point of time, the delinquent had handed over any slips expressing his sexual desire. The complainant herself said that the delinquent had passed on several slips with obscene expressions and that she had destroyed all except the said two slips, which establishes clearly the attitude of the complainant to wreck vengeance against the delinquent. Further, there was no identity of the author of those slips, nor was there any indication that the message therein was directed towards the complainant. The learned senior counsel argued that the complainant stealthily removed the slips which were kept in the office-room of the delinquent and used the same against the delinquent. The delinquent is leading a happy married life and there was no necessity for him to solicit sexual favours from anyone much less the complainant.

23. The learned counsel for the complainant submitted that when the delinquent officer has not made any complaint against the conduct of enquiry, like procedural irregularity or lack of opportunity, this Court, sitting under Article 226 of the Constitution of India, cannot act like an appellate Court to re-appreciate the evidence. The learned counsel for the complainant relied on a judgment of the Apex Court in APPAREL EXPORT PROMOTION COUNCIL vs. A.K.CHOPRA [(1999) 1 SCC 759], wherein it has been held:

> "Regarding the nature of approach that courts should take while dealing with cases of sexual harassment at the place of work of female employees, it is to borne in mind that sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee was capable of being used for effecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile working environment for her. Any action or gesture, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment.

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> In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, as is the position in the instant case, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the delinquent superior officer is wholly misplaced and mercy has no relevance."

It has also been held therein:

> "Findings of disciplinary proceedings should not be treated as one of criminal trial. Courts should examine the broader probabilities of the case and not get swayed by insignificant discrepancies or narrow technicalities. They must examine the entire material to determine the genuineness of the complaint"

24. There is no quarrel regarding the proposition laid down by the Apex Court. In this context, it is to be mentioned that as against the impugned order passed by the Appointing Authority in this case, no appeal remedy is available to the delinquent officer and the only remedy available for him is to invoke the jurisdiction of this Court under Article 226 of the Constitution. Further more, in MATHURA PRASAD vs. UNION OF INDIA [(2007) 1 SCC 437, considering the entire case law on the subject of judicial review, the Apex Court has categorically and in no uncertain terms has ruled:

> "When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

25. True, sexual harassment, in any form, at workplace must be viewed seriously and culprits should not be allowed to escape from the clutches of law since, to narrate in the words of Dr.Justice

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A.S.Anand, former Chief Justice of India, 'it humiliates and frustrates a victim of crime when the offender goes unpunished or is let off with a relatively minor punishment as the present system pays no attention to his injured feelings. Imposition of appropriate punishment on the criminal is the response of the courts to the society's cry for justice.'

26. But, at the same time, it should be kept in mind that a charge of this nature is very easy to make and is very difficult to rebut. When a plea is taken of false implication for extraneous reasons, Courts have a duty to make deeper scrutiny of the evidence and decide the acceptability or otherwise of the accusations. Every care has to be taken to separate chaff from the grain. The veracity and genuineness of the complaint should be scrutinised to prevent any misuse of such laudable laws enunciated for the upliftment of the society and for equal rights of people without gender discrimination, by anybody under the garb of 'sexual harassment', lest the justice rendering system would become a mockery.

27. In PANDURANG SITARAM BHAGWAT vs. STATE OF MAHARASHTRA [(2005) 9 SCC 44], at page 47 the Apex Court has held:

> "The approach of the learned trial Judge as noticed supra that ordinarily a lady would not put her character at stake may not be wrong but cannot be applied universally. Each case has to be determined on the touchstone of the factual matrix thereof. The law reports are replete with decisions where charges under Sections 376 and 354 IPC have been found to have been falsely advanced."

28. Keeping in mind the above propositions of law laid down by the Apex Court and further since, as has already been adverted to supra that there is no appeal remedy to the delinquent officer as against the impugned order of compulsory retirement inflicted on him with a stigma and the only remedy to him is under Article 226 of the Constitution, we are of the view that in such matters, the Court should be more vigilant in assessing the case so as to render justice, to its true meaning to uphold the majesty of justice and law.

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29. As could be seen from the complaint of the complainant, the delinquent officer is accused of issuing two slips to her, first slip containing English writings as "I want to kiss on cheeks, chin and lips" and the second slip containing the Tamil scribblings as "துன்பம் நேர்கையில் யாழிசைத்து இன்பம் சேர்க்க மாட்டாயா?", the English translation of which, as has been narrated by the Appointing

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Authority, is "Can't you give me pleasure at times of crisis, by playing music..."

30. Admittedly, both these slips were in the handwriting of the delinquent officer, but not addressed to the complainant. The complainant claims that they were handed over to her by the delinquent officer, for which there is no evidence on record, expressing his illegal and immoral quench towards her. As against the said charge, a strong, cogent, consistent, probable and reliable defence has been raised by the delinquent officer stating that as a student preparing for M.L. Dissertation, he had collected various materials as and when available from various journals and magazines and the materials so collected were written in small slips of papers with an intention to prepare a rough draft subsequently. The materials so collected in various bits of papers were kept in his office table, which had no lock and key and the alleged slips of papers, alleged to have been given to the complainant, were among many bits of papers in which materials have been gathered by him from various sources. When he was preparing his M.L. Dissertation, he found some of the slips being either misplaced/lost and immediately himself along with his colleagues in the Tribunal, including the complainant searched for the said materials. But, they could not be traced. Hence, he gathered the relevant materials once again and submitted his M.L. Dissertation titled "Child Labour-Exploitation-Preventive Measures and its study indepth".

31. The delinquent officer further submits that to emphasise the difference between infatuation and true love, some lines from the poem written by great Tamil poet "Bharathidasan" and a portion from a novel 'Payum Oli Nee Enakku' written by great novelist Janakiram were quoted in one slip from his memory. Further, to highlight the exploitation of women workers despite their non-acceptance for any favour/s, another quotation was written. His further case is that the complainant helped him in typing out his M.L.Dissertation, which was admitted by her in her evidence also, and only to avoid the loan of Rs.10,000/= advanced by his wife, to the complainant, she has pitted the slips, which she has stolen/had possession of against him at the instance of some jealous colleagues, who were unable to bear/digest his frequent promotions.

32. A perusal of the entire materials placed on record would show that the husband of the complainant by name Mr.Ganapathy Subramanian was an accused in C.C.No.2056 of 1996 on the file of the Court of VII Metropolitan Magistrate, Madras for an offence under Section 138 of the Negotiable Instruments Act and to bail out her husband from criminal prosecution, the complainant borrowed a sum of

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Rs.10,000/= from the wife of the delinquent officer, by executing a promissory note dated 14.6.1999, for which D.W.1 was the witness, agreeing to repay the same within three months with interest at 24% p.a. which, according to the complainant, was repaid by her. According to the complainant, at the relevant time, the delinquent officer was misbehaving with her. If there is truth in her contention and complaint, the complainant should not have sought the help of the delinquent officer and received money from his wife. No prudent man would seek the help of anybody, if there is genuine reason to believe that such a person is causing any kind of harassment to him. When such a serious complaint of sexual harassment has been made by the complainant against the delinquent officer, if it is really true, in the firm view of this Court, she should not have approached the delinquent officer, which raises a strong suspicion about the genuineness and veracity of her complaint, which was not erased by the complainant. This aspect also favours the strong and consistent defence raised by the delinquent officer that only to avoid payment of the debt towards him, this false complaint has been lodged by the complainant against him.

33. The Appointing Authority also, in para No.11, has observed that the complainant ought not to have approached the delinquent for a loan of Rs.10,000/= even if it was so urgent and necessary to bail out her husband from criminal prosecution since she felt that she was being sexually harassed by the delinquent and was vexed with him and ought not to have attempted at all to borrow any money from him, but has proceeded on wrong footings to found the delinquent guilty of the charges.

34. When such a strong and consistent defence was advanced on the part of the delinquent employee, by examining D.W.1 also to prove the loan advanced by his wife to the complainant and the subsequent compromise mooted by the complainant herself, but taking a 'U' turn on the ground it would tell upon her, further leading to some kind of punishment from the Registry for lodging such a complaint and withdrawing it later, the Enquiry Officer proceeded only on the basis that the writings on Exs.P2 and P.3 were admitted by the delinquent, forgetting the fact to which extent they were admitted. In the light of the above factual matrix of the case on hand, we are unable to appreciate the argument advanced on the part of the complainant that in all such cases of sexual harassment, the defence of the delinquent officer would be that he advanced a loan to the complainant and only to avoid repayment of such loan amount, a false complaint has been lodged by the complainant, since neither the factum of borrowing an amount of Rs.10,000/= from the wife of the delinquent officer nor the execution of the pronote was denied by the

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complainant. Further, as has already been observed supra, through the evidence of D.W.1 it is clear that the complaint mooted a compromise, but has taken 'U' turn on the ground that it may lead to initiation of disciplinary proceedings against her for lodging such a complaint and withdrawing it later. Therefore, the argument advanced on the part of the complainant is rejected.

35. When the slips does not contain anybody's name or address, much less the name of the complainant and when a strong case has been put up on the part of the delinquent that they were misused by the complainant, who assisted him in preparing his M.L. Dissertation, to avoid the loan amount, the Enquiry Officer, ought to have considered the matter in depth in proper perspective. The failure on the part of the Enquiry Officer to appreciate the evidence available on record in its proper perspective, led to miscarriage of justice. Though the standard of proof in departmental enquiry proceedings is not as that of in criminal proceedings and it is sufficient to prove the preponderance of probability, since the Enquiry Officer failed to appreciate the entire probabilities of the case from the proper perspective of the cases put up on either side, he has landed in an erroneous conclusion leading to miscarriage of justice, since even the Appointing Authority has taken the findings of the Enquiry Officer as God's saying in spite of abundant material available on record contra.

36. The delinquent officer marked his Dissertation submitted on "Child Labour-Exploitation-Preventive Measures and Indepth Study" as Ex.D.14 before the Enquiry Officer, which fortifies his defence that he intended the contents in those two slips for his dissertation since Page Nos.12 and 13 of his Dissertation contains the contents of Exs.P.2 and P.3. The same is extracted hereunder:

> "A scene is also available. At factories/Offices/Private Establishments, Officers/employers have this in mind, a sadistic approach to tease the working women. When the working woman is a new recruit, they do this in the garb of helping/giving the training to the work. When they raise a voice or when they resist, they will fly off. Another kind of Officers/employees are also available. With nicety in their words, with utmost begging, chocked with emotion they will beg with the woman folk saying: With permission, I want to kiss on cheeks, chins and lips. If agreeable, please give your hands, if not, excuse me...."
>
> "To get rid of the sexual harassment, among all the things they should be understood to have the variation between sexual harassment, true love and infatuation. This

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student thinks that youngsters should read good magazines, epics like Ramayana, Mahabharata, Bharathiar songs, novels written by famous writers Kalki, Sivasankari 'Nandu', Indumathi's 'Tharaiyil Irangum Vimanangal', Janaki Raman's 'Paviyum Oli Nee Yenakku' and recent one of "Adu Oru Nilakalam'. Cinemas also try to exhibit good films, avoiding cheep comedy etc.,..."

37. While such is the factual position that the contents of Exs.P.2 and P.3 are the ingredients of Ex.D.14, a strange finding was recorded by the Enquiry Officer that since because the contents of Ex.P.2 and P.3 find a place in Ex.D14, it cannot be stated that they were not intended to the complainant. The Appointing Authority, in Para No.9 of his order, found that 'as rightly pointed out by the Enquiry Officer, there is no link between the dissertation submitted by the delinquent and the plea made by him that they were notes prepared for the said purpose, as the dissertation was submitted during August 1999 while the contents of Exs.P2 and P3 are of the month of September/October 1999 during Dasara holidays'. In the light of the above clinching evidence available on record, this Court is unable to appreciate the findings of the Enquiry Officer, which were taken for granted by the Appointing Authority, leading to miscarriage of justice.

38. At this juncture, it is relevant to point out that as could be seen from the Certificate issued by Mr.R.Viduthalai, Advocate, 101, New Law Chambers, High Court Madras, who was the guide of the delinquent officer for his Dissertation, the same was dated 29.8.1999. But, the complaint of the complainant is dated 18.2.2000. When such is the factual position, that too in the absence of any date or name of the addressee in Exs.P.2 and P.3, we are unable to appreciate the findings of the Enquiry Officer and the Appointing Authority that Exs.P.2 and P.3 were intended only towards the complainant and they were handed over by the delinquent to the complainant during Dasara Holidays.

39. Furthermore, to the 'acknowledgements' annexed to his Dissertation, the delinquent expressed his sincere thanks, among others, to the complainant also, for their constant unstinted encouragement, support and valuable assistance during the course of the said research. Therefore, it cannot be said the delinquent officer has fraudulently introduced such writings into his Dissertation only to escape from the allegations of the complainant.

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40. The Enquiry Officer has not even bothered to look at the defence evidence, which, as said above, is strong, cogent, consistent probable and reliable in nature.

41. The explanation offered on the part of the complainant for delay in lodging the complaint that since she was a probationer, she feared to lodge the complaint, cannot also be appreciated since by the time she lodged the complaint on 18.2.2000 also, she was a probationer. Further more, there is no restriction or prohibition for any probationer to lodge any such complaint. The other explanation that since the delinquent officer was her superior, he would have impaired the chances of her probation being declared, if she venture to lodge such a complaint against him also cannot be accepted, since, only the Appointing Authority is competent to declare her probation and the delinquent officer or any other officer for that matter has no role to play in such decisions of the Appointing Authority.

42. Regarding the other charge of phone calls made by the delinquent officer during midnights to the complainant, the delinquent officer has replied that under compelling circumstances that too on two or three occasions, he contacted her during daytime that too during holidays requesting repayment of loan advanced by his wife to the complainant and nothing more nothing less. Even regarding the allegation of the complainant that the delinquent officer had made telephone call to her from Delhi, where he had been on an official duty, a strong case has been put up on the part of the delinquent officer that he instructed her to hand over the computerized speech to the Honourable Chief Justice before lunch. In this context, it is relevant to mention that the delinquent officer has produced materials before this Court in the form of typed set, to show that the then Honourable Chief Justice used to give handwritten material for typing. When such is the position, it is paining to note that the said defence put up by the delinquent officer was not even considered by the Enquiry Officer and without any discussion, he observed on Point No.2 as follows:

> "P.W.2 also corroborated the factum of calling P.W.1 by delinquent from Delhi. From the narration of events, it is proved that the delinquent called P.W.1 at her residence over phone on several occasions including a call from Delhi."

The same reasoning would apply to the alleged phone calls made by the delinquent officer to the P.A. Section, where the complainant used to sit. It is on record that there is no much work in the Tribunal where the delinquent officer and the complainant were deputed and

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hence the complainant used to attend the Courts to take down dictations and she used to sit either in the Personal Secretary's room or in the P.A. Section. Therefore, it is but probable for the delinquent officer to contact her wherever she is, to leave any instructions imparted to him by the Honourable Chief Justice. This aspect has not at all been considered by the Enquiry Officer and the Appointing Authority. Except the interested ipse dixit of the complainant and her husband, there is nothing on record to substantiate such a serious charge levelled against the delinquent officer.

43. At this point, we feel it appropriate to record the motivated intention of the complainant. The complainant lodged her complaint on 18.2.2000, based on which an Official Memorandum was issued to the delinquent officer on 1.3.2000, seeking for his explanation and charges were framed against him on 5.6.2000. Thereafter, on 20.6.2000, the complainant sent another complaint to the Registrar General, High Court, wherein besides giving details in minute, she made allegations against the then Enquiry Officer, who was a senior-most District Judge on other duty as Special Officer of the Vigilance Cell of the High Court, as if he intimidated her and the entire examination by the Enquiry Officer was aimed at bullying her and discrediting her character. The complainant narrated the questions put to her by the then Enquiry Officer. From the said questions alleged to have been put by the Enquiry Officer, we are able to understand that the then Enquiry Officer wanted to apprise himself fully of the matter, which were commented otherwise by the complainant, since she might have thought that her desired goal cannot be achieved. We are prompted to comment so because in the very same complaint, she requested the Registrar General to suspend or atleast transfer the delinquent officer from the High Court, as if otherwise the delinquent will continue to misuse his position as an Officer of the High Court as if the Enquiry Officer was obliged to the delinquent officer, and requested to stay the enquiry until a Committee is constituted as per Visaka judgment of the Apex Court. As already stated supra, the delinquent officer, has no authority to interfere in the enquiry proceedings, which were being conducted by a senior-most District Judge and there was no such complaint also either from the earlier Enquiry Officer or the subsequent Enquiry Officer. This fact would establish that the complainant is destined to go to any extent, to achieve her desired goal. Further more, the said complaint of the complainant, as observed supra, is dated 20.6.2000. The very next day i.e. on 21.6.2000, she filed W.P.No.10157 of 2000 before this Court, without even waiting for the reply from the Registrar General to her complaint dated 20.6.2000.

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44. Another aspect this Court wants to point out is that as against the delinquent officer, the complainant lodged a criminal complaint in Cr.No.29 of 2001 before the B4 High Court Police for the offences under Sections 294(b) and 506(1) IPC on 7.11.2001. When the said case was called by the VII Metropolitan Magistrate, G.T., Chennai on 25.4.2005, she was not present and there is no representation also for the complainant. Therefore, the FIR was closed as further action dropped. Thereafter, no step was taken by the complainant to pursue her criminal complaint, probably because she has already achieved her desired goal of throwing the delinquent officer from his official position in the departmental proceedings initiated at her initiation on 10.10.2002 itself, on which date the order of compulsory retirement was served on the delinquent officer. The complainant lodged the said criminal complaint on 7.11.2001 during the pendency of the enquiry proceedings, i.e. after 21 months of her complaint to the Registrar General (which was given by her on 8.2.2000), which, in our view, is only to create documentary evidence in her favour so as to be used in the departmental proceedings which shows her motivated intention of achieving her illegal goal of throwing the delinquent officer from his official position. As has already been observed supra, neither the Enquiry Officer nor the Appointing Authority appreciated the materials on record in their proper perspective, resulting in miscarriage of justice.

45. The entire reading of the Enquiry Officer's Report depicts his pre-concluded mind and trying to supply reasons to substantiate the same, which was approved by the Appointing Authority. The entire findings of the Enquiry Officer, which were carried on by the Appointing Authority went on hypothesis and without appreciating the materials placed on record in their proper perspective, leading to miscarriage of justice.

46. In VISHAKA vs. STATE OF RAJASTHAN (1997) 6 SCC 241, the Apex Court has prescribed the guidelines and norms to ensure the prevention of sexual harassment of women and in clause (2) it has been prescribed as follows:

> "For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:
> (a) physical contact and advances;
>
> (b) a demand or request for sexual favours;
> (c) sexually-coloured remarks;
> (d) showing pornography;

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(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto."

47. From the above discussion, we are satisfied that the allegations levelled against the delinquent officer by the complainant in her complaint do not attract any one of the above conditions prescribed by the Apex Court in the above Judgment, to punish the delinquent officer such as (a) physical contact and advances; (b) a demand or request for sexual favours; (c) sexually-coloured remarks; (d) showing pornography; (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. There is no physical contact and advances made by the delinquent officer towards the complainant and the writings on Exs.P.2 and P.3 cannot be considered as a demand or request for sexual favours as the said material is meant only for inclusion in the Dissertation for his M.L. We find that there are no sexually coloured remarks made against the complainant by the delinquent officer or showing any pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Therefore, initiation of disciplinary proceedings against the complainant is not at all warranted since no fundamental right of the complainant or her right to live with gender equality enshrined under Articles 14,15,19(1)(g) and 21 of the Constitution is violated. Therefore, we hold, as rightly contended on behalf of the delinquent officer, that the complainant misused Exs.P.2 and P.3, which were in her possession, with ulterior motive to avoid repayment of the loan obtained by her from the wife of the delinquent officer on a promissory note executed by her on 14.6.1999 to get relief to her husband from the criminal case in C.C.No.2056 of 1996 on the file of the Court of VII Metropolitan Magistrate, Madras for the offence

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under Section 138 of the Negotiable Instruments Act. Therefore, we hold that the framing of charges, conduct of enquiry and passing the impugned order of compulsory retirement on the delinquent officer are all illegal and liable to be quashed. Accordingly, we order that the delinquent officer is entitled to be reinstated into service with all attendant benefits including continuity of service and backwages. Therefore, W.P.No.29024 of 2003 filed by the delinquent officer is entitled to be allowed.

In the result, as has already been observed supra, W.P.No.10157 of 2000 filed by the complainant is dismissed as infructuous and W.P.No.29024 of 2003 filed by the delinquent officer is allowed. The delinquent officer is ordered to be reinstated into service with all attendant benefits, with continuity of service and backwages. If, by this time, the delinquent officer attained the age of superannuation, he shall be treated as retired in usual course after attaining the age of superannuation. No costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

Jai/Rao

To

The Registrar General,
High Court of Judicature at Madras
Chennai-600 104

1 cc to ms.R. Vaigai,Advocate, sr. 36193
1 cc to Mr.K. Balachandran, Advocate, Sr. 36198

W.P.Nos.
10157/2000 & 29024/2003 and
WPMP.17558 of 2006

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